

Hon. John H. Chun

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KURT A. BENSHOOF; A.R.W. by and through  
his father, KURT A. BENSHOOF,

Plaintiffs,

v.

MARSHALL FERGUSON, J. DOE, BLAIR  
RUSS, JESSICA SKELTON, MICHAEL  
TRACY, SARAH TURNER, JAMAL  
WHITEHEAD,

Defendants.

No. 2:24-cv-00808-JHC

DEFENDANT MARSHALL  
FERGUSON’S OPPOSITION TO  
PLAINTIFF’S MOTION TO STAY

NOTED ON MOTION CALENDAR:  
September 30, 2024

**I. INTRODUCTION**

Defendant Marshall Ferguson (“Defendant”) submits this opposition to Plaintiff Kurt Benshoof’s (“Plaintiff” or “Benshoof”) Motion to Stay these proceedings indefinitely. For the reasons stated below, Defendant respectfully asks this Court to deny Plaintiff’s request for an indefinite stay, or in the alternative, only permit a stay of short duration. Defendant Marshall Ferguson plans to file a Rule 12 Motion to Dismiss based on judicial immunity, and the Court should allow Defendant the opportunity to seek a speedy resolution of the claims against him.

**II. FACTUAL BACKGROUND**

Plaintiff Kurt Benshoof filed this action on June 7, 2024, against defendants Marshall Ferguson, Blair Russ, Jessica Skelton, Michael Tracy, Sarah Turner, and Jamal Whitehead. Dkt. #1.

1 Marshall Ferguson is a King County Superior Court Judge who was assigned one of Mr. Benshoof's  
 2 cases in the state trial court and eventually entered an order restricting abusive litigation against  
 3 Benshoof. *See* Dkt. #28, Ex. A. Other named defendants are attorneys and judges who have either  
 4 represented opposing parties or presided over civil cases involving Benshoof in both state and federal  
 5 courts. *See* Dkt. #1 at 5.

6 Benshoof has been in custody at the King County jail since early July pending various  
 7 criminal charges in King County Superior Court and Seattle Municipal Court. Dkt. #41.

8 Defendant Jessica Skelton filed a motion to dismiss based on qualified immunity on July 11,  
 9 2024. Dkt. #27. This Court deferred entry of a case scheduling order pending its ruling on Ms.  
 10 Skelton's motion to dismiss. Dkt. #37. This Court granted Ms. Skelton's motion to dismiss the claims  
 11 against her on August 9, 2024. Dkt. #40.

12 Plaintiff filed the motion to stay on September 9, 2024, asking this Court to stay the civil  
 13 proceeding indefinitely until he is released from custody. Dkt. #41. Plaintiff claims that he is unable  
 14 to write and file documents in this case, and that he has been prohibited from any internet access since  
 15 July 3, 2024. Dkt. #41 at 1-2, 6.

### 16 III. LEGAL STANDARD

17 "The Constitution does not ordinarily require a stay of civil proceedings pending the outcome  
 18 of criminal proceedings." *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995);  
 19 *Fed. Savings and Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989). In the absence of  
 20 substantial prejudice to the rights of the parties involved, simultaneous parallel civil and criminal  
 21 proceedings are unobjectionable under our jurisprudence." *Keating*, 45 F.3d at 324. "Although a  
 22 district court has broad discretion to stay proceedings, the moving party bears a heavy burden in  
 23 demonstrating that a stay is warranted." *Clinton v. Jones*, 520 U.S. 681, 706, 708 (1997); *Private*

1 *Client Fiduciary Corporation v. Chopra*, 22-CV-00436-LK, 2023 WL 2969617, at 2 (W.D. Wash.  
 2 April 17, 2023). Generally, stays should not be indefinite in nature. *Dependable Highway Exp., Inc.*  
 3 *v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007).

4 In determining whether civil proceedings should be stayed, courts consider the extent to which  
 5 the defendant's Fifth Amendment rights are implicated, and also the following factors: (1) the  
 6 plaintiff's [non-moving party] interest in proceeding expeditiously with the civil litigation, and the  
 7 potential prejudice to the plaintiff from delay; (2) the burden imposed on defendants; (3)  
 8 the court's convenience in managing its docket and the efficient use of judicial resources; (4) the  
 9 interests of non-parties; and (5) the public's interest in the pending civil and criminal  
 10 proceedings. *Keating*, 45 F.3d at 324-325 (citing *Molinaro*, 889 F.2d at 902) (emphasis added).

#### 11 IV. ARGUMENT

12 Staying this case indefinitely would prejudice Judge Ferguson's ability to expeditiously  
 13 resolve this case. Judges are entitled to absolute judicial immunity and Judge Ferguson is preparing a  
 14 Rule 12 motion to dismiss claims against him. The motion will be filed either contemporaneously  
 15 with this response, or within a few days of this response. A lengthy and categorical stay does not take  
 16 into consideration the non-moving parties' interest in bringing this case to a close.

17 Many incarcerated individuals are able to litigate their claims in federal court. Although  
 18 Plaintiff claims that he is unable to write or file documents in this case, he was able to file documents  
 19 with this Court, including the motion to stay. His motion to stay contains legal citations,  
 20 demonstrating his ability to conduct legal research while in custody. Plaintiff has not demonstrated  
 21 sufficient legal basis to stay this lawsuit indefinitely.

22 This Court previously found good cause and deferred issuing a case scheduling order pending  
 23 Ms. Skelton's motion to dismiss. It would also be in the interest of judicial economy for the Court to

1 deny a stay and allow Judge Ferguson an opportunity to expeditiously resolve this case through a  
 2 motion to dismiss. The non-parties and the public do not have a particular interest in these  
 3 proceedings, except for the general interest in expeditious litigation.

4 In determining whether this case should be stayed, the balance of interests of the *Molinaro*  
 5 factor weighs against a stay of this case. Plaintiff has not met the heavy burden that a stay is warranted.  
 6 However, if the Court finds that a stay is necessary, the stay should only be of short or reasonable  
 7 duration.

## 8 V. CONCLUSION

9 For those forgoing reasons, defendant Marshall Ferguson respectfully asks the Court to deny  
 10 Plaintiff's motion for an indefinite stay.

11 I certify that this response contains 872 words, in compliance with the Local Civil Rules.  
 12

13 DATED this 24<sup>th</sup> day of September 2024.

14  
 15 LEESA MANION (she/her)  
 King County Prosecuting Attorney

16 By: s/ Peggy Wu  
 17 PEGGY WU, WSBA #35941  
 Senior Deputy Prosecuting Attorney  
 King County Prosecuting Attorney's Office,  
 18 Civil Division  
 701 5<sup>th</sup> Avenue, Suite 600  
 19 Seattle, WA 98104  
[pwu@kingcounty.gov](mailto:pwu@kingcounty.gov)  
 20 Attorney for Marshall Ferguson  
 21  
 22  
 23

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on September 24, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF E-filing system which will send automatic notification to the following:

Kurt A. Benshoof  
1716 N 128TH ST  
SEATTLE, WA 98133  
206-460-4202  
Email: [kurtbenshoof@gmail.com](mailto:kurtbenshoof@gmail.com)  
*Pro Se*

I also hereby certify that on September 24, 2024, I sent the same via US Postal Service to the following:

Kurt Benshoof  
BKG. #2024-008067  
King County Correctional Facility  
Maleng Regional Justice Center  
620 West James Street  
Kent, WA 98032

Howard Brown  
1003 W. Michigan St.  
Hammond, LA 70401

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 24<sup>th</sup> day of September 2024.

By: s/ Katie Wilson  
KATIE WILSON  
Paralegal, Civil Division  
King County Prosecuting Attorney's Office